

1 IN THE UNITED STATES COURT OF APPEALS
2 FOR THE 8TH CIRCUIT
3

4 TOM BRADY, et. al

Case No: 11-1898

5
6 NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION

Judges: Duane Benton
Kermit Bye
Steven Colloton

7 PLAINTIFF
8

9 v.
10

11 NFL OWNERS

12 NATIONAL FOOTBALL LEAGUE, et al

13 DEFENDANT
14

15 AND

16 NATIONAL FOOTBALL LEAGUE PLAYERS' RESERVE (NFLPR)
17 DEFENDANT-INTERVENOR'S MOTION TO STAY JUDGE NELSON'S LOCKOUT ORDER

18 The National Football League Players' Reserve (NFLPR), a separate single entity nominative
19 fair use organization whose reference and interests pertain to collegiate rookie football players
20 entering the ranks of the National Football League, hereby moves to intervene in this action.

21 Proposed defendant-intervenor submits that it is a party with interests with respect to the issues
22 raised herein. Pursuant to Fed. R. Civ. P. 24(a) (2), the proposed intervenor hereby moves the court
23 for leave to intervene in this action as of right and that on timely motion to the court must permit
24 anyone to intervene who, (2) claims an interest relating to the property—rookie football players—or
25 transaction—antitrust claim by the plaintiffs—that is the subject of the action, and is so situated that
26 disposing of the action may as a practical matter impair or impede the movant's ability to protect its
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1 interest unless the existing parties adequately represent that interest. The grounds for this motion
2 are set forth in the memorandum below:

3 4 MEMORANDUM

5 1. BACKGROUND

6 Defendant-intervenor filed this action seeking a declaration that a permanent stay of the district court
7 judge's order to lift the NFL players lockout be maintained during the appeals process in which,
8 upon discovery, probative evidence will be produced that indicates irreparable harm done to the NFL
9 owners and players represented by the National Football League Players Association due to unfair
10 labor practices that are prohibited by the National Labor Relations Board under the auspices of the
11 National Labor Relations Act.
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14 Defendant-intervenor brings into question the National Football League Players Association's union
15 security clause as exhibit A, which sheds light on the NFLPA's violation of NFL players section 7
16 union rights established by the National Labor Relations Act pertaining to negotiating and enforcing
17 the withholding of players' union dues without their authorization and without the use of a dues
18 "checkoff" authorization—see page 30 of A guide to basic law and procedures under the National
19 Labor Relations Act and the NFLPA's ambiguous union security clause Article V, which leaves out
20 the importance of utilizing a dues "checkoff" authorization when exacting fees and dues from player
21 salaries for union purposes. Under their clause there is no mention of this authorization in writing
22 that can be interpreted and applied giving the owners and players an understanding that union dues
23 are being properly handled. On page 30 of the guide it states that an employer—in this case NFL
24 league owners who represent their employees/players—may deduct union dues and fees owed
25 by its employees and FORWARD THEM TO THE UNION FOR EACH EMPLOYEE/PLAYER
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1 WHO HAS VOLUNTARILY SIGNED A DUES "CHECK OFF" AUTHORIZATION. Not only
2 does the NFLPA not mention this in their union security clause, but they also do not inform their
3 members of how much of a percentage of the NFL players fees and dues forwarded to them by the
4 owners are used for representational and non-representational activities. In addition to this,
5 players are not informed that they have a right to be notified by the union—upon decertification of
6 their union—that they may revoke their checkoff authorizations.
7

8 Defendant-intervenor claims that the probability of irreparable harm done to the owners and players
9 represented by the National Football League Players Association in violation of these labor practices
10 are self evident in Gary Bloom v. National Labor Relations Board 30 F.3d 1001: Because an overly
11 broad union security clause has been unlawfully interpreted and applied, an adequate remedy in this
12 case requires expunction of the offending union security clause. The National Football League
13 Players Association this intervenor claims, are thus guilty of "double jeopardy" irreparable harm
14 "fraudulent persuasion" of the owners in exacting fees and dues from them without the use of a
15 player dues "checkoff" authorization, and misinforming their player/members of their union rights.
16 Just as the NFLPA has requested that the NFL owners open their books disclosing 10 years of audited
17 information, the non-use of checkoff authorizations—unfair labor practices—this intervenor claims
18 has been the revelation that the National Football League Players Association has been unlawfully
19 practicing. This defendant-intervenor, therefore, requests a permanent stay of the district judge's
20 lockout order—of veteran union represented players only (unrestricted/restricted free agents) at the
21 time they collectively walked away from the owners and a collective bargaining deal in March 2011,
22 prior to the NFLPA's decertification vote. Rookie players entering the NFL were not members of the
23 National Football League Players Association at the time of the union's decertification and thus
24 should be permitted to utilize NFL team facilities in order to acclimate to the next level.
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NOTIFICATION TO THE COURT THAT NFL TELEVISION
FEES WERE NOT PUT ASIDE TO FUND A LOCKOUT: ADMISSIBILITY
OF ELECTRONIC EVIDENCE UNDER FEDERAL RULES OF EVIDENCE

A. Requirement of Authentication of Electronic Evidence

This defendant-intervenor discloses to the Appeals court that in a 2008 e-mail sent along with additional emails sent to an executive member of the National Football League Executive Committee about a new rookie preseason professional football schedule prior to the 2011 season—NFL executive, Mr. Mark Murphy was contacted, who made this information aware to the NFL and owners. This suffices as probative evidence that television fees were not collected to fund a lockout as the plaintiffs suggest. Under FRE rule 901(b) (1) Testimony of Witness with Knowledge this can be additionally introduced to the trial court. A September 17, 2010 telephone call from this executive to the defendant-intervenor in support of this new rookie schedule to add to maximizing revenues for the NFL was made in response. Under FRE, requirement of authentication of electronic evidence can be admitted into court, which states that a court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury might do so (Lorraine v. Markel American Insurance Co. 2007 U.S.).

II. ARGUMENT

A. The intervenor satisfies the requirements for intervention as of right as set forth in Fed. R. Civ. P. 24(a)(2), and that this motion should be liberally construed to permit intervention, Grubbs v. Norris, 870 F. 2d 870 F.2d 343 (6th Cir. 1989). Each of these requirements for intervention as of right is addressed, below:

1. The intervenor has an interest in the subject of the action—the property—rookie players entering the National Football League, who were not under the representation of the unfair labor practices of the NFLPA, who will be subject to irreparable harm if they are categorized with the litigants—veteran, restricted, and unrestricted players—whose representative union has already caused irreparable harm to them.
2. The intervenor's interests will be impaired if defendant-intervenor is not permitted to intervene.
3. The defendant-intervenor's application for intervention is timely.
4. The defendant-intervenor satisfies the requirements for permissive intervention as set forth in Civ. R. 24(a)(2)

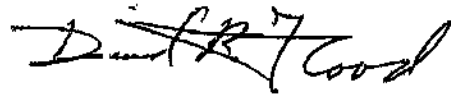
III. CONCLUSION:

For the foregoing reasons, proposed defendant-intervenor, the National

1 Football League Players' Reserve, respectfully requests that this motion be granted to intervene
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8 Dated: May 9, 2011

Respectfully submitted,

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11 David R. Flood
12 U.S. Army Vet./ President, National Football
13 League Players' Reserve

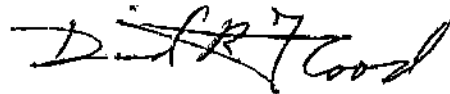
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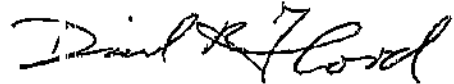
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion to intervene was electronically filed on

MAY 10, 2011

Notice of this filing will be sent by operation to the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

David R. Flood



President, National Football League
Players' Reserve